

**Pt. 1794**

(d) The written acknowledgement required by paragraph (a) of this section, the plans and specifications referred to in paragraph (b) of this section, and the written certification required by paragraph (c) of this section are to be submitted to the appropriate Director of the Regional Electric Division, Power Supply Division, Regional Telephone Division, or Rural Development Assistance Staff. When plans and specifications are not otherwise required to be submitted to the RUS Washington's offices, the data required to be included on the plans and specifications by paragraph (b) of this section must be submitted in letter form to the appropriate Director prior to the release of the plans and specifications for construction purposes.

(The information and recordkeeping requirements of this section have been approved by the Office of Management and Budget (OMB) under the control number 0572-0099.)

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## Rural Utilities Service, USDA

## § 1794.10

AUTHORITY: National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); Pub. L. 103-354, 108 stat. 3178 (7 U.S.C. 6941 *et seq.*); Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508); Executive Order (EO) 11988, Floodplain Management; and EO 11990, Protection of Wetlands.

SOURCE: 49 FR 9550, Mar. 13, 1984, unless otherwise noted.

### Subpart A—General

#### § 1794.1 Purpose.

This part contains the policies and procedures of the Rural Utilities Service (RUS) for implementing the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508); and certain related statutes, regulations and orders. Among those statutes, regulations and orders are the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Advisory Council on Historic Preservation regulations on Protection of Historic and Cultural Properties (36 CFR Part 800); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Executive Order (EO) 11514, "Protection and Enhancement of Environmental Quality"; EO 11593, "Protection and Enhancement of the Cultural Environment"; EO 11988, "Floodplain Management"; EO 11990, "Protection of Wetlands"; and the Farmland Protection Policy Act (Pub. L. 97-98).

#### § 1794.2 Actions requiring environmental review.

The provisions of part 1794 apply to proposed administrative actions by RUS including, without limitation, loans, loan guarantees, reclassification of loan funds, lien accommodations, and approvals provided pursuant to loan contracts and security instruments (*e.g.*, approvals of the use of the general funds).

#### § 1794.3 Compliance.

The effective date of provisions contained in part 1794 is the date of publication of the final rule in the FEDERAL REGISTER. Any environmental docu-

ment accepted or prepared by RUS prior to the effective date may be developed in accordance with the RUS environmental requirements in effect at the time the document was accepted or prepared by RUS.

#### § 1794.4 Trivial violations.

It is the intent of this part that a trivial violation of its provisions will not give rise to an independent cause of action.

#### § 1794.5 Responsible officials.

The agency contact points for environmental matters shall be the Assistant Administrator, Electric or Telephone (as appropriate); Rural Utilities Service; U.S. Department of Agriculture; South Building, Washington, DC 20250. The Assistant Administrators, Electric and Telephone, are responsible for determining the proper definition of proposals and the need for the preparation and approval of draft Environmental Impact Statements (EIS). Final EIS's will be issued and approved by the Administrator.

#### § 1794.6 Metric units.

It is RUS's policy to prepare environmental documents using metric units with British system equivalents in parentheses. Environmental documents prepared by or for an RUS borrower (Borrower) should follow the same format.

#### § 1794.7 Guidance.

For further guidance in the preparation of notices and environmental documents RUS has prepared an RUS Environmental Guide. A copy of this RUS Environmental Guide is available upon request to the Assistant Administrator, Electric or Assistant Administrator, Telephone; Rural Utilities Service; U.S. Department of Agriculture, Washington, DC 20250.

### Subpart B—Implementation of the National Environmental Policy Act

#### § 1794.10 Apply NEPA early in the planning process.

The environmental review process requires early coordination with and involvement of RUS. Borrowers should

consult with RUS at the earliest stages of planning for any proposal which may require RUS action. Since planning efforts and environmental evaluation for power supply facilities, including power plants, transmission lines, coal or other fuel development, are inter-related, these activities should take place within the same time frame.

**§ 1794.11 Consideration of alternatives.**

In determining what are reasonable alternatives, RUS will consider a number of factors including, but not limited to, state of the technology, availability of resources and the time frame in which the identified need must be fulfilled.

**§ 1794.12 Public involvement.**

In carrying out its responsibilities under NEPA, RUS shall make diligent efforts to involve the public in the environmental review process through the following means:

(a) RUS notices required by part 1794 shall be published in the FEDERAL REGISTER and shall describe the nature, location and extent of the proposed action and indicate the availability and location of additional information.

(b) Borrower's notices, when required by this part or otherwise required by RUS, shall consist of both a legal notice and a paid advertisement published in a timely manner in a newspaper or newspapers of general circulation in the counties in which the proposal will take place or such other places as RUS determines. It shall generally describe the nature, location and extent of the Borrower's proposal and indicate the availability and location of additional information. If both the paid advertisement and legal notice appear in the same edition, the advertisement need not be lengthy and can refer the reader to the legal notice for a more detailed explanation. The Borrower shall consult with RUS prior to issuance of Borrower's notices where an EIS or Environmental Assessment (EA) will be prepared.

(c) The Borrower shall submit to RUS, as soon as practicable after publication, copies and publication dates of all Borrower's legal notices and paid advertisements published. A copy of all comments received by the Borrower

(including the Borrower's position, if any) concerning environmental aspects of the proposal shall be provided to RUS in a timely manner.

(d) Public hearings or meetings may be held at reasonable times and locations concerning environmental aspects of a proposed action in all cases where, in the Assistant Administrator's opinion, the need for hearings or meetings is indicated in order to develop adequate information on the environmental implications of the proposed action. The following shall be required in connection with a meeting or a hearing:

(1) Where an environmental document is the subject of the hearing or meeting, that document will be made available to the public at least ten (10) days in advance.

(2) Any person, organization or government body desiring to make a statement at the hearing or meeting may make such statement in writing or orally. Public hearings or meetings normally will be informal and will generally be confined to the environmental aspects of the proposal.

(3) RUS notice shall be published at least thirty (30) days before the hearings or meetings. The Borrower's notice of the hearings or meetings shall be published at least ten (10) days but no more than thirty (30) days before the hearings or meetings. RUS shall determine the counties in which the Borrower's notice shall be published in newspapers of general circulation to assure that persons most likely to be affected by the proposal will be made aware of the hearings. The notice shall present the date, time, location and purpose of the hearing or meeting. If an environmental document is the subject of the hearing or meeting, the notice shall inform the public where it can be obtained or is available for review.

(e) A list of RUS administrative actions for which EIS's and EA's are being prepared or contemplated will be available for public inspection at RUS's offices in Washington, DC.

**§ 1794.13 Interagency involvement.**

In carrying out its responsibilities under NEPA, RUS shall, to the extent

practicable, coordinate its environmental review and combine its meetings and hearings with those of other Federal, state and local agencies. The Borrower shall inform RUS of potential involvement of other agencies in the proposal at the earliest practicable time to facilitate such coordination.

### Subpart C—Provisions Applicable to EA or EIS Preparation

#### § 1794.20 Interagency coordination.

(a) Whenever practicable, RUS will encourage the use of a lead agency in preparation of an EIS or EA so that a single document and review process will cover all Federal agency actions arising from the proposal or directly related group of proposals. It is the policy of RUS to volunteer to act as lead agency in the preparation of an EA or EIS when the Borrower so requests, and when RUS would normally prepare an EA or EIS for the proposal.

(b) Where RUS acts as a cooperating agency, RUS shall rely upon the lead agency's procedures for implementing NEPA and CEQ regulations in the preparation and issuance of an EA or EIS, unless the lead and cooperating agencies agree to a modification of these procedures.

(1) RUS shall request that the lead agency indicate that RUS is a cooperating agency in all NEPA related notices published for the proposal. In addition, RUS shall request that the lead agency permit RUS to review and comment on the EA or draft and final EIS prior to issuance.

(2) The Borrower shall inform RUS in a timely manner of its involvement in a proposal where another Federal agency is preparing an EIS or EA to permit RUS to adequately fulfill its duties as a cooperating agency.

(c) Where practicable and in order to eliminate duplication and delay, RUS will coordinate its NEPA process with state and local environmental procedures. Where state or local agencies control siting of electric transmission lines or electric generating stations, RUS shall consult and coordinate with those state and local agencies in determining what are the reasonable siting and route alternatives.

#### § 1794.21 Limitations on actions during the NEPA process.

In determining which Borrower activities related to a proposal requiring development of an EA or EIS may be approved prior to completion of the NEPA process, RUS must determine, among other matters that:

(a) The activity will not have an adverse environmental impact. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed will not have an adverse environmental impact. However, site preparation or construction at or near the proposed site (*e.g.*, rail spur) or development of a related facility (*e.g.*, opening a captive mine) normally will have an adverse environmental impact.

(b) The expenditure is "minimal." To be minimal the expenditure:

(1) Must not exceed the amount of loss which the borrower could absorb without jeopardizing the government's security interest in the event the proposed project is not approved by the Administrator, and

(2) Must not compromise the objectivity of RUS's environmental review. Notwithstanding other considerations, expenditures up to 10 percent of the proposed project cost normally will not compromise RUS's objectivity.

#### § 1794.22 Tiering.

It is RUS's policy to tier EIS's and EA's where:

(a) It is practicable, and  
(b) There will be a reduction of delay and paperwork, or where better decisionmaking will be fostered.

[49 FR 9550, Mar. 13, 1984; 49 FR 10083, Mar. 19, 1984]

### Subpart D—Classification of Proposals

#### § 1794.30 Control.

For environmental review purposes, RUS has identified and set forth categories of Borrower proposals. A Borrower or Borrowers may propose to participate with other parties in the ownership of a project where the Borrowers do not have sufficient control and responsibility to alter the development of the project. In such a case the

proposal will be considered a categorical exclusion regardless of the category into which the proposal would otherwise be included. Where the Borrowers propose to cumulatively own 5 percent or less of a project, the proposal will normally be considered a categorical exclusion. Where the Borrowers propose to cumulatively own 33⅓ percent or more of a project, the proposal will be treated in its usual category. Where the Borrowers propose to cumulatively own more than 5 percent but less than 33⅓ percent of a project, RUS will determine whether the Borrowers have sufficient control and responsibility to alter the development of the project. Consideration will be given to such factors as: (a) Whether construction would be completed regardless of RUS financing assistance; (b) the stage of project planning and construction; (c) total Borrower participation; (d) participation percentage of each utility in the project; and (e) managerial arrangements and contractual provisions.

**§ 1794.31 Categorical exclusions (proposals normally requiring neither an EIS nor an EA).**

(a) Borrower proposals that do not individually or cumulatively have a significant effect on the environment and do not normally involve significant unresolved conflicts concerning alternate use of available resources, do not require an EIS or EA. In order to provide for extraordinary circumstances, such proposals may require development of a Borrower's Environmental Report (BER) or the equivalent.

(b) Certain types of Borrower proposals do not require a BER. Proposals of this type are subject to the requirements of § 1794.41. Proposals within this classification are:

(1) Purchase of land where use will remain unchanged.

(2) Routine approvals made pursuant to loan and security documents (*e.g.*, contracts for bulk commodities, fuel, goods and services, capital credit retirements, technical specifications).

(3) Agreements for transmission, wheeling, interconnection with, power purchase from, or sale to other utilities where no associated Borrower con-

struction or financing of construction is involved.

(4) Additional or substitute financing assistance for proposals which have previously received environmental review and approval from RUS, provided that environmental considerations have not changed.

(5) Rehabilitation or reconstruction of roads, railroad tracks, roadbed, bridges and other transportation facilities within transportation rights-of-way or generating facility sites where there is no substantial increase in use. A description of the rehabilitation or reconstruction shall be provided to RUS.

(6) Primary fuel or mineral contracts where, considering all the facts and circumstances, the Borrower does not have effective control over or responsibility to alter the development of the specific fuel or mineral source (*e.g.*, mine).

(7) Changes or additions to existing substations or switching stations or external changes to buildings or small structures requiring new physical disturbance or fencing of less than 0.4 hectare (0.99 acre). A description of changes and additions shall be provided to RUS.

(8) Internal modifications or equipment additions (*e.g.*, computer facilities, relocating interior walls) to small structures or buildings.

(9) Internal or minor external changes to electric generating or fuel processing facilities and related support facilities where there is negligible impact on the outside environment. A description of the changes shall be provided to RUS.

(10) Ordinary maintenance or replacement of equipment or small structures (*e.g.*, line support structures, microwave facilities, valves).

(11) The construction of telephone and communication lines and cables at existing power related facilities sites.

(12) Supervisory control and data acquisition systems (SCADA) and energy management systems involving no new external construction.

(13) Testing work (*e.g.*, test borings or cores, water test wells).

(14) Studies and engineering undertaken to define a proposal or alternatives sufficiently so that environmental effects can be assessed.

(15) The construction of electric power lines within an existing substation, switching station or electric generating facility site. A description of the facilities to be constructed shall be provided to RUS.

(16) Contracts for certain items of equipment which are part of a proposal for which RUS is preparing an EA or EIS, and which meet the limitations on actions during the NEPA process set forth in §1794.21 (*e.g.*, long lead time items such as turbines or boilers).

(17) Internal RUS administrative actions (*e.g.*, personnel actions, procurement) and RUS bulletins that do not concern environmental matters or substantial facility design, construction or maintenance practices.

(c) Certain types of Borrower proposals normally require Borrower submission of a BER or its equivalent. Proposals of this type are subject to the requirements of §1794.42. Proposals within this classification are:

(1) The construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(i) Less than 69 kV (low side) or

(ii) Less than 230 kV (low side) if both:

(A) No more than 40 kilometers (24.85 miles) of power line are involved, and

(B) Substations and switching stations require new physical disturbance or fencing of no more than 2 hectares (4.94 acres) at any single site nor more than 4 hectares (9.88 acres) for all sites.

(2) The construction of electric power lines where less than 5 kilometers (3.11 miles) of line are involved.

(3) The construction of telephone and communication lines, cables and facilities.

(4) The construction of other small structures or buildings such as microwave facilities, cooperative headquarters, maintenance facilities, etc., involving no more than 2 hectares (4.94 acres) of physical disturbance or fencing.

(5) Participation by a Borrower(s) in any proposed project where total Borrower financial participation in the un-

derlying project will be five (5) percent or less.

(6) Purchase of existing facilities or a portion thereof where use or operation will remain unchanged and which presently are in compliance with environmental laws and regulations.

(7) Additional bulk commodity storage (*e.g.*, coal, peat, lignite, limestone, etc.) within existing generating station boundaries.

(8) SCADA and energy management systems which require new external construction.

(9) Reconductoring or upgrading of existing telephone or power lines where either the same or substantially equivalent support structures at the approximate existing support structure locations are used.

(10) Proposals designed to reduce the amount of pollutants released into the environment (*e.g.*, precipitators, baghouse or scrubber installation, coal washing plant and equipment) which have no other environmental impact outside of the existing facility site.

(11) Changes or additions to existing substations or switching stations or external changes to buildings or small structures requiring 0.4 hectare (0.99 acre) or more but no more than 2 hectares (4.94 acres) of new physically disturbed land or fenced property.

(12) Construction of diesel electric generating facilities of less than 3 megawatts (MW) (nameplate rating) at an existing generating site. All new associated facilities and electric power lines related to the generating proposal shall be covered in the BER.

(13) Modification of an existing hydroelectric project or dam that will have a total installed capacity of 1.5 MW (nameplate rating) or less and which will result in no change in the normal maximum surface area or normal maximum surface elevation of an existing impoundment. All new associated facilities and electric power lines related to the generating proposal shall be covered in the BER.

#### **§ 1794.32 Proposals normally requiring an EIS.**

(a) Actions that may significantly affect the quality of the human environment require preparation of an EIS. An

EIS normally will be required in connection with Borrower proposals for construction and operation of the following types of facilities:

(1) New electric generating facilities of 40 MW or more (nameplate rating) other than diesel generators or combustion turbines. All new associated facilities and electric power lines related to the generating proposal shall be covered in the EIS.

(2) A new mining operation when the Borrower or Borrowers have effective control (e.g., dedicated mine or purchase of a substantial portion of the mining equipment).

(b) Proposals of this type are subject to the requirements of §§1794.50 to 1794.55.

**§ 1794.33 Proposals normally requiring an Environmental Assessment without scoping.**

(a) RUS will normally prepare an EA for all proposals which are neither categorical exclusions (§1794.31) nor are proposals normally requiring an EIS (§1794.32). For certain actions within this class, scoping and document procedures set forth in §§1794.50 to 1794.53 shall be followed (see §1794.34). The following are examples of specific Borrower proposals which normally require an EA without scoping.

(1) Construction of combustion turbine and diesel generating facilities of less than 40 MW (nameplate rating), except for diesel generating facilities of less than 3 MW (nameplate rating) at an existing generating site. All new associated facilities and electric power lines related to the subject generating proposal shall be covered in the EA.

(2) Construction of any other type of new electric generating facilities of less than 5 MW (nameplate rating). All new associated facilities and electric power lines related to the subject generating proposal shall be covered in the EA.

(3) Modification of an existing hydroelectric project or dam if:

(i) The project or dam will have a total installed capacity of more than 1.5 MW (nameplate rating); or

(ii) The modification will result in a change in the normal maximum surface area or normal maximum surface elevation of an existing impoundment.

All new associated facilities and electric power lines related to the generating proposal shall be covered in the EA.

(4) The expansion of a mining or drilling operation or a new drilling operation.

(5) Purchase of existing facilities or a portion thereof which are presently in violation of Federal, state or local environmental laws or regulations.

(6) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 230 kV or more (low side) not covered by §1794.31 (categorical exclusions) or §1794.34 (normally requiring an EA with scoping).

(7) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 69 kV or more (low side) but less than 230 kV (low side) where:

(i) More than 40 kilometers (24.85 miles) of power line are involved or

(ii) Substations and switching stations require new physical disturbance of fencing of more than 2 hectares (4.94 acres) at any single site or more than 4 hectares (9.88 acres) for all sites.

(8) Proposals designed to reduce the amount of pollutants released into the environment which may have other environmental impacts outside of the existing facility site.

(9) Issuance of RUS regulations concerning environmental matters or substantial facility design, construction or maintenance practices.

(b) Proposals of this type are subject to the requirements of §§1794.60 to 1794.64.

**§ 1794.34 Proposals normally requiring an Environmental Assessment with scoping.**

(a) There are certain actions which require the use of a scoping procedure in the development of an EA. After the scoping process is completed and an acceptable Environmental Analysis has been submitted by the Borrower, RUS will determine whether to prepare an EIS or finding of no significant impact (FONSI). The types of proposals falling within this category are:

(1) The construction of electric power lines and related facilities designed for or capable of operation at a nominal

voltage of 230 kV or more (low side) where:

(i) More than 40 kilometers (24.85 miles) of power line are involved; or

(ii) Substations and switching stations require new physical disturbance or fencing involving a total of more than 2 hectares (4.94 acres) at any single site or more than 8 hectares (19.77 acres) for all sites.

(2) Construction of combustion turbines and diesel generators of 40 MW (nameplate rating) or more; and the construction of any other type of electric generating facilities of 5 or more MW but less than 40 MW (nameplate rating). All new associated facilities and electric power lines related to the subject generating project shall be covered in any EA or EIS prepared.

(b) Proposals of this type are subject to the requirements of §§ 1794.70 to 1794.73.

#### **§ 1794.35 Work plan proposals.**

Borrowers frequently request financing assistance for a number of relatively minor unrelated projects all of which are described in a single “work plan.” In determining the proper environmental classification of construction projects contained in a work plan, RUS will consider as a single proposal all related construction included in the work plan and any additional construction related thereto which, although not included in the work plan, is reasonably foreseeable.

### **Subpart E—Procedure for Categorical Exclusions**

#### **§ 1794.40 General.**

The following procedure, which applies to action classified as categorical exclusions in § 1794.31 hereof, provides RUS with information necessary to determine if the proposed action meets the criteria for a categorical exclusion. Where, because of extraordinary circumstances, an action may have a significant effect on the quality of the human environment, RUS may require additional environmental documentation.

#### **§ 1794.41 Proposals with no BER.**

Normally the Borrower shall not submit a BER for proposals included in

§ 1794.31(b). However, if so noted in § 1794.31(b) the Borrower shall submit a description of the proposal. Such description shall include, where applicable, a plan for erosion and sedimentation control. No public notice is required unless the proposal is located in and may affect wetlands or floodplains.

#### **§ 1794.42 BER proposals.**

For proposals included in § 1794.31(c) the Borrower normally shall submit a BER or its equivalent which will assist RUS in identifying extraordinary circumstances in which a normally excluded action may have a significant environmental effect. No public notice is required unless the proposal is located in and may affect wetlands or floodplains. RUS shall not permit construction or other activities which would have an environmental effect until it has received, reviewed and accepted an adequate BER.

### **Subpart F—Procedure for Proposals Normally Requiring an EIS**

#### **§ 1794.50 Normal sequence.**

Appendix A to part 1794 (Procedure for Proposals which Normally Require an EIS) describes the normal sequence of EIS preparation to be employed by RUS. For proposals normally requiring an EA with scoping (see § 1794.34), the NEPA process shall proceed in the same manner as for proposals normally requiring an EIS through the point at which the Environmental Analysis is submitted (see § 1794.53). After the Environmental Analysis has been submitted, RUS shall make a judgment to prepare either an EIS or a finding of no significant impact (FONSI).

#### **§ 1794.51 Preparation for scoping.**

(a) RUS has developed a general approach to the NEPA process, including scoping, for proposals normally requiring an EIS (§ 1794.32) and for proposals normally requiring an EA with scoping (§ 1794.34). Scoping procedures are designed to determine the scope of issues to be addressed and to identify significant issues related to a proposed action. RUS may require scoping procedures to be followed for other proposals where appropriate to achieve the purposes of NEPA.



(b) As soon as practicable, RUS will publish its notice of intent to prepare an EIS (see 40 CFR 1508.22). The Borrower shall publish, in a timely manner, a notice similar to RUS's notice. If the proposal is one which normally requires an EA with scoping (§1794.34), the notice shall indicate that: (1) RUS may prepare an EA before or without necessarily preparing an EIS, and (2) the decision whether or not to prepare an EIS will be based on information received from the Borrower, Federal, state and local agencies, organizations and the general public during the scoping process, preparation of the Environmental Analysis, and the review period for a finding of no significant impact (if originally issued).

(c) As part of the early project planning the Borrower should consult with expert and interested Federal, state and local agencies to inform them of the proposed project, and to identify permits and approvals which must be obtained and administrative procedures which must be followed.

(d) Before any scoping meetings are held RUS shall require the Borrower to submit two environmental documents:

- (1) Alternative evaluation;
- (2) Siting study (for electric generation or new mines) or Macro-Corridor study (for electric transmission).

(e) The Borrower is encouraged to hold additional public information meetings in the general location of the proposed project and any reasonable alternatives when such borrower meetings will make the scoping process more meaningful. A written summary of the comments made at such meetings should be submitted to RUS as soon as practicable after the meetings.

#### **§ 1794.52 Scoping meeting.**

(a) Both RUS and the Borrower shall publish a notice of the public scoping meeting which shall:

- (1) Provide a brief description of the nature and location of the Borrower's recommended alternative (if any) and reasonable alternatives;
- (2) State the intent to hold public scoping meetings, giving the date, time, location and purpose of these meetings;
- (3) State where copies of the scoping documents are available for public re-

view, which shall include the Borrower's headquarters, RUS offices in Washington, and other locations as determined by RUS;

(4) Provide the name and address of the person to whom questions and comments should be sent;

(5) Set forth a thirty (30) day period after the scoping meeting(s) to enter comments into the meeting record.

(b) The RUS notice will be published at least thirty (30) days prior to the meeting(s). The Borrower's notice shall be published at least ten (10) days, but not more than thirty (30) days prior to the meeting(s).

(c) The scoping meeting(s) will normally be held in the vicinity of the Borrower's recommended alternative and, where appropriate, the reasonable alternatives or such other places as RUS determines will best afford an opportunity for public involvement. Any person, organization or government body desiring to make a statement at the meeting may make such statement in writing or orally. A record will be made of the scoping meeting.

(d) As soon as practicable after the scoping meetings(s), RUS, as lead agency, shall determine the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. RUS will develop a proposed scope for further environmental study and review. A copy of this proposed scope will be sent to cooperating agencies and the Borrower, which shall be given thirty (30) days to comment on its adequacy and emphasis. After expiration of the thirty (30) day period RUS will provide formal guidance to the Borrower concerning the scope of environmental study to be performed and information to be gathered.

#### **§ 1794.53 Borrower's environmental analysis.**

(a) After scoping procedures have been completed, RUS shall require the Borrower to develop and submit an Environmental Analysis satisfactory in form and substance to RUS. The Environmental Analysis will be prepared under the guidance of the RUS staff and all information set forth therein

shall be subject to independent verification by RUS.

(b) The Environmental Analysis will normally provide a basis for preparation of RUS's EA or EIS and may be made an appendix to the RUS document. After RUS has reviewed and found an Environmental Analysis to be satisfactory, the Borrower will be required to provide RUS with a sufficient number of copies of the Environmental Analysis to satisfy RUS's distribution plan.

(c) The Environmental Analysis shall include a summary of the construction and operation monitoring and mitigation measures for the proposed project. This summary shall appear in the draft and final EIS. These measures may be revised as appropriate in response to comments on the draft and final EIS and other information. These measures also shall be incorporated by summary or reference into RUS's Record of Decision.

#### **§ 1794.54 EIS.**

(a) After a draft or final EIS has been prepared, RUS and the Borrower shall issue a notice of availability for the document. The notice shall:

(1) Provide a brief description of the nature and location of the preferred and reasonable alternatives;

(2) State the availability of a draft or final EIS for public review;

(3) State how copies of the EIS can be obtained and where copies are available for public review which shall include the Borrower's headquarters, RUS offices in Washington, DC, selected libraries in the area of the preferred and reasonable alternatives and such other reasonable places as RUS shall select;

(4) Provide the name and address of the person to whom questions and comments should be sent;

(5) Set forth the time period for review and comment. This time period normally shall be forty-five (45) days for a draft EIS and thirty (30) days for a final EIS, measured from the date that the U.S. Environmental Protection Agency's notice or the Borrower's notices are first published, whichever is later.

RUS and the Borrower notices for the final EIS shall also request persons, organizations or governmental bodies which wish to be notified when the Record of Decision is available to inform RUS of such interest.

(b) In addition to circulation required by 40 CFR 1502.19, draft and final EIS's (or summaries thereof, at RUS's discretion) shall be circulated to the appropriate state, regional, and metropolitan clearinghouses.

(c) Where a final EIS does not require that substantial changes be made in the draft EIS, RUS may document required changes through errata sheets, insertion pages and revised sections to be incorporated into the draft EIS. In such cases, RUS will circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information, as its final EIS. RUS will not circulate the draft EIS again, although the draft EIS will be provided if requested within thirty (30) days of publication of notice of availability of the final EIS.

(d) In individual situations, upon mutual agreement between RUS and the Borrower, the EIS may be prepared by an independent contractor. If RUS acts as lead agency, the contractor will be chosen by RUS. Under this procedure, the Borrower normally will not be required to submit an Environmental Analysis.

[49 FR 9550, Mar. 13, 1984; 49 FR 10083, Mar. 19, 1984]

#### **§ 1794.55 Timing of agency action.**

(a) Where an RUS action requires an EIS, RUS shall prepare a Record of Decision. The Record of Decision will not be prepared, and RUS will not take any action or execute commitments before expiration of the thirty (30) day period starting with either EPA's notice in the FEDERAL REGISTER that the final EIS is available or the Borrower's notices of availability, whichever is later.

(b) For budgetary purposes some financing assistance may be approved conditionally with a stipulation that no funds will be advanced until a Record of Decision has been prepared.

### Subpart G—Procedure for Environmental Assessment Proposals Without Scoping

#### § 1794.60 General.

The following procedure applies to all actions classified as Environmental Assessment projects in § 1794.33 hereof. Where appropriate to carry out the purposes of NEPA, RUS may require, on a case by case basis, that additional action be taken in connection with preparation of an EA. If at any point in the preparation of an EA, RUS determines that the action will have a significant impact on the environment, the preparation of an EIS will be required and the procedures applicable thereto will be followed.

#### § 1794.61 Document requirements.

For those proposals covered by § 1794.33, the Borrower shall submit a BER or its equivalent. The BER may serve as RUS's EA if RUS makes an independent evaluation of the environmental issues and concurs in the BER's scope and content. The BER also may be made an Appendix to RUS's EA to provide information on the proposal and reduce unnecessary paperwork.

#### § 1794.62 Notice of availability.

The Borrower shall publish a public notice of availability of the BER.

(a) The Borrower's notice shall:

(1) Provide a brief description of the nature and location of its recommended and reasonable alternatives;

(2) State the availability of the BER for public review;

(3) State how copies of the BER can be obtained and where copies are available for public review, which shall include the Borrower's headquarters, RUS offices in Washington, DC, and other locations as determined by RUS;

(4) Provide the name and address of the person to whom questions and comments should be sent;

(5) Set forth a thirty (30) day time period for review and comment.

(b) The Borrower's notice shall be published after RUS has determined that the BER provides a satisfactory basis for public comment.

[49 FR 9550, Mar. 13, 1984; 49 FR 10083, Mar. 19, 1984]

#### § 1794.63 FONSI and notice requirements.

(a) If RUS, after reviewing the EA, finds that the proposal will not have a significant effect on the human environment, RUS shall prepare a FONSI. After the FONSI has been made, RUS shall publish a notice of availability of the EA and FONSI. The Borrower shall have published, in a timely manner, a similar notice.

(b) Both the RUS and Borrower's notice shall:

(1) Provide a brief description of the nature and location of the preferred and reasonable alternatives;

(2) State that an EA and FONSI have been prepared;

(3) State how copies of the EA and FONSI can be obtained, and where copies are available for public review which shall include the Borrower's headquarters, RUS offices in Washington, and other locations as determined by RUS;

(4) Provide the name and address of the person to whom questions and comments should be sent.

(c) RUS shall not permit construction or other activities which would have an environmental effect until it has received, reviewed and accepted an adequate BER and the public notice requirements in paragraphs (a) and (b) of this section have been met.

#### § 1794.64 Timing of agency action.

RUS may take its final action on proposals requiring an EA without scoping (§ 1794.33) at any time after publication of the RUS and Borrower notices that a FONSI has been made.

### Subpart H—Procedure for Environmental Assessment Proposals With Scoping

#### § 1794.70 General.

For those proposals covered by § 1794.34, RUS and the Borrower shall follow the procedures for scoping and the requirements for notices and documents set forth in §§ 1794.50 through 1794.53 of Subpart F, "Procedure for Proposals Normally Requiring an EIS."

**§ 1794.71 RUS determination.**

After the scoping process and receipt of an acceptable Environmental Analysis, RUS shall make a judgment as to whether or not RUS's action will be a major Federal action significantly affecting the quality of the human environment. If a significant effect is evident, RUS shall continue with the procedures in §§1794.54 through 1794.55 of Subpart F, "Procedure for Proposals Normally Requiring an EIS." If a significant effect is not evident, RUS shall develop and prepare an EA and FONSI.

**§ 1794.72 Notice requirements for a FONSI determination.**

If RUS prepares a FONSI for a proposal covered by § 1794.34, RUS and, in a timely manner, the Borrower shall publish notices of availability of the EA and FONSI. The EA and FONSI shall be made available for public review and comment for at least thirty (30) days, and the RUS and Borrower notices shall solicit public comments. Additional RUS and Borrower notice requirements are included in § 1794.63.

**§ 1794.73 Timing of agency action for FONSI determination.**

RUS may take its final action at any time after expiration of the thirty (30) day period measured from the date of publication of the RUS notice in the FEDERAL REGISTER. Normally RUS shall wait thirty (30) days after publication of the Borrower's notice before taking a final action.

### Subpart I—Adoption of Environmental Documents

**§ 1794.80 General.**

Where Borrowers participate in projects for which other agencies have already prepared an EIS or EA, RUS will adopt the existing EIS or EA consistent with the provisions of 40 CFR 1506.3.

**§ 1794.81 Adoption as a final EIS.**

(a) If RUS acted as a cooperating agency, the lead agency's EIS may be adopted as a final EIS without recirculation if RUS has reviewed the comments received on the final EIS and

concluded that comments and suggestions have been adequately considered.

(b) If RUS was not a cooperating agency but determines that another Federal agency's EIS is adequate it will adopt the EIS as its final EIS.

(1) RUS and the Borrower shall publish a notice stating RUS's adoption of the EIS and independent determination of its adequacy. The notices are governed by §§1794.12 (general) and 1794.54(a) (EIS).

(2) If the adopted EIS is generally available, RUS will circulate its written finding that the adopted EIS meets the standards for an adequate EIS. The adopted EIS shall be made available to interested parties upon request.

(3) If the adopted EIS is not generally available, RUS will circulate its written finding that the adopted statement is an adequate EIS, along with either the adopted EIS or a summary thereof in accordance with 40 CFR 1502.19. The adopted EIS shall be circulated in the same manner as a final EIS (see § 1794.54(b)).

**§ 1794.82 Adoption as a draft EIS.**

Where RUS determines that an existing Federal EIS requires additional information to meet the standards for an adequate statement for a proposed RUS action, RUS may adopt all or a portion of the EIS as a part of its draft EIS. The circulation provisions of § 1794.54(b) for draft and final EIS's apply. The general notice provisions (§ 1794.12) and notice provisions for EIS's (§ 1794.54(a)) apply.

**§ 1794.83 Adoption of an EA.**

RUS may adopt a Federal EIS or EA or a portion thereof as its EA. RUS shall make the EA available and assure that notice is provided in the same manner as if RUS had prepared the EA.

**§ 1794.84 Adoption of environmental materials.**

RUS may adopt environmental documents or portions thereof prepared by Federal, state or local agencies or other parties independently of the requirements of NEPA. RUS may adopt such materials into its environmental documents. RUS will circulate the adopted document as a part of its environmental assessment or draft and

§ 1794.85

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final EIS in the same manner as if prepared by RUS.

**§ 1794.85 Timing of agency action.**

Where RUS has adopted another agency's environmental documents, the timing of the RUS action shall be subject to the same requirements as if RUS had prepared the required EA or EIS.

**Subpart J—Supplemental EIS**

**§ 1794.90 Circulation and notices.**

(a) A supplement to a draft or final EIS shall be prepared, circulated and given notice by RUS and the Borrower in the same manner (exclusive of scoping) as a draft and then final EIS (see § 1794.54).

(b) Normally RUS and the Borrower shall have published notices of intent to prepare a supplement to a final EIS in those cases where a Record of Decision has already been issued.

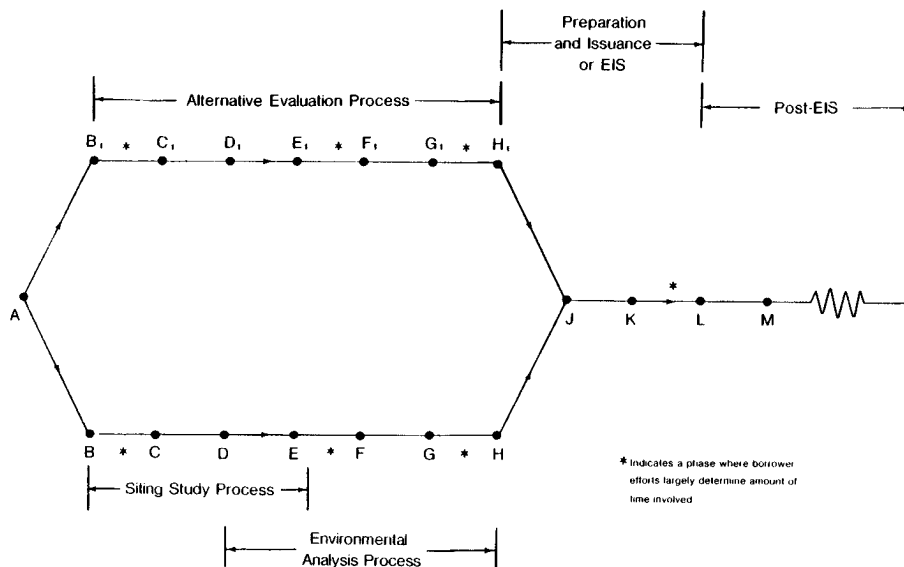
(c) RUS, at its discretion, may issue an information supplement to a final EIS where RUS determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). RUS and the Borrower shall publish a notice of availability. The notice requirements shall be the same as for a final EIS indicated in § 1794.54(a). The information supplement shall be circulated in the same manner as a final EIS (see § 1794.54(b)). RUS shall take no final action on any proposed modification discussed in the information supplement until thirty (30) days after the RUS notice of availability is published or thirty (30) days after the Borrower's notice is published, whichever occurs later.

**§ 1794.91 Timing of agency action.**

Timing of RUS's action shall be subject to the same requirements as apply to a typical EIS.

**Appendix A**

**Procedure for Proposals Which Normally Require an EIS**



*Diagram Legend*

- ◆ On-going activity in the EIS process
- B, C, D, Discrete events in the Siting Study and Environmental Analysis path
- B<sub>1</sub>, C<sub>1</sub>, Discrete events in the Alternative Evaluation path

As the diagram illustrates, there will be two separate but interrelated study processes leading to the preparation of the EIS. One process B<sub>1</sub> through H, will examine alternatives to building a generating (or transmission or new mining) facility. The other process, B through H will examine a range of potentially acceptable sites for a generating (or transmission or new mining) facility.

In order to facilitate long-range planning and reduce delays, a Borrower may undertake preliminary evaluations of alternative means of providing power and begin the study of a range of potentially acceptable sites for a generation (or transmission or new mining) facility before demonstrating a need for the proposal. However, the obligation to show a need for the proposal will still remain before RUS financing assistance can be obtained.

Equal spacing between points on the diagram is not meant to suggest equal time intervals. Where two letters are the same (except for subscripts), generally the two indicated events should occur within the same time frame. For B<sub>1</sub>D and B<sub>1</sub>D<sub>1</sub>, this is only true where the Borrower initiates site selection at a time when there is a specific need to be filled. For major transmission projects, events occurring with reference to the Macro-Corridor Study are analogous to the generation and mining Siting Study procedures.

The flow diagram is intended to indicate the normal sequence of events although some variance may be acceptable in individual cases if good cause is demonstrated. However, in all instances RUS shall assure that the requirements of the NEPA and CEQ regulations are fulfilled.

*Discrete Events*

A: The Borrower presents to RUS the underlying needs which form the basis of its proposal. RUS undertakes for electric generation proposals, when necessary, the preparation or update of the power requirements study (PRS) utilizing RUS procedures. For electric generation and transmission and mining proposals, the need for the proposal shall be presented in the draft and final EIS's (or EA, as applicable).

B and B<sub>1</sub>: The Borrower consults with RUS on the procedures and general parameters for the Siting Study and on potential alternative ways to meet the need, including guidance on preparing the Alternative Evaluation. Consultation may be initiated even if a specific need has not been identified.

B̄C̄: Work is performed on the Siting Study by the Borrower and/or consultant. This includes "macroanalysis" in which general criteria, literature search and consultation are used to identify a reasonable range of potentially acceptable sites.

Borrower/consultant contact Soil Conservation Service (SCS), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), U.S. Army Corps of Engineers (COE), Federal land use agencies and state agencies for early guidance and input.

As soon as practicable during this period, RUS publishes its "Notice of Intent" in the FEDERAL REGISTER and the Borrower publishes similar information in local newspapers of general circulation. (See §1794.51(b)).

B<sub>1</sub>C<sub>1</sub>: Borrower does research and consultation, contacts other utilities, etc., to determine whether there are reasonable alternatives to a new generating (or transmission or mining facility). The Alternative Evaluation should include discussion, as appropriate, of joint projects, alternate fuels, alternate energy sources, conservation, etc. Alternatives eliminated from detailed study should be identified and reasons given for the elimination. The Borrower should also indicate which alternatives are reasonably available to it if its recommended alternative is not approved.

C and C<sub>1</sub>: Borrower submits draft of Siting Study and Alternative Evaluation to RUS for review. RUS reviews each draft for major flaws. If such flaws are not present, RUS submits both the draft Siting Study and Alternative Evaluation to potentially involved Federal and state agencies (including, but not limited to, all agencies invited to the field investigation) for review and comment.

D and D<sub>1</sub>: RUS invites other Federal and state agencies to make a field investigation of potentially acceptable siting areas discussed in the draft Siting Study and critique the study methodology, and point out potential problems with these alternative siting areas. The Borrower at this time presents site and nonsite specific alternatives included in the Siting Study and Alternative Evaluation to these agencies for their comments. Participating agencies may critique alternative means of meeting the need and point out potential problems with alternative siting areas. The agencies set up a strategy for conducting the scoping process and tentatively identify the lead and cooperating agencies for the EIS.

DE: Federal agencies are given the opportunity to comment on the potentially acceptable alternatives to point out fatal flaws. During this stage the Borrower may secure land, water or other critical factors for potentially acceptable sites by option or other means (subject to the limitations in §1794.21). If RUS's notice of intent and the

Borrower's notice did not give the date and time of the scoping meeting, scoping meeting notices are published now.

E and E<sub>1</sub>: Scoping meeting(s) is held to receive input from the public, interested parties, and Federal, state and local officials and agencies. Among the topics open to discussion are reasonable alternatives to meet the need, potentially acceptable sites, participation projects or conservation, significant issues to be addressed in the EIS, and the need for the project.

EF: Borrower submits revised Siting Study (or addenda if appropriate) to RUS for review after revising it to reflect input from scoping meeting(s). RUS consults with cooperating agencies on the scope of the EIS and gives the Borrower guidance on scope of the Environmental Analysis. Borrower prepares the draft Environmental Analysis which includes a fatal flaw study of potentially acceptable sites and a "microanalysis" in which detailed field work is conducted on the Borrower's recommended site(s). The Borrower continues consultation with RUS and other interested Federal, state, and local agencies, and the public, and reflects their comments in the Environmental Analysis.

D<sub>1</sub>F<sub>1</sub>: Borrower updates and expands, as necessary, the Alternative Evaluation on the basis of comments received from Federal, State and local officials and agencies, input from participants at the scoping meeting(s), the general public and new developments (e.g., negotiations with other electric power utilities), RUS provides guidance to the Borrower during this period based on cooperating agency and public input.

F and F<sub>1</sub>: The Borrower submits draft Environmental Analysis to RUS for review and comment. If the draft Environmental Analysis has no readily apparent critical flaws, RUS distributes copies of the Environmental Analysis to cooperating agencies for review. Borrower submits Alternative Evaluation, which has been updated after the scoping

meeting, and also includes new alternatives, if any, which have developed. RUS submits updated Alternative Evaluation to requesting cooperating agencies. The Environmental Analysis may incorporate the Alternative Evaluation leading to a single review document.

FG and F<sub>1</sub>G<sub>1</sub>: RUS and cooperating agencies independently evaluate, for accuracy, scope and content, the information submitted to them. RUS collates responses and reconciles them with the Borrower. RUS may begin writing the draft EIS at this point.

H and H<sub>1</sub>: RUS Borrower submits, as appropriate, a final revised Environmental Analysis and Alternative Evaluation to RUS.

HJ and H<sub>1</sub>J: RUS independently evaluates the revised documents and verifies the information therein before use in the EIS. During this time, RUS prepares the draft EIS, utilizing the borrower-supplied data, interagency expertise, and other information.

J: RUS issues draft EIS for public review and comment publishing notice of availability in the FEDERAL REGISTER.

K: Public comment period ends on draft EIS. This date may be extended in certain instances.

KL: RUS (and cooperating agencies, as appropriate) review comments received on draft EIS and responds, by modifying alternatives, developing alternatives not previously given sufficient consideration, supplementing, improving or modifying the analyses, etc. A final EIS or supplemental draft EIS is prepared, as appropriate, with cooperating agencies' assistance.

M: Record of decision is issued. RUS will take no final action on any loan guarantee, etc., sooner than 30 days after issuance of the final Federal EIS.

MN: Implementation of mitigation measures is checked, as necessary, by RUS and other Federal, state, and local agencies during construction and operation of the project.